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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/872,188

06/01/2001

David C. Mullen

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09/25/2006

AVAYA INC.

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EXAMINER

TO, JENNIFER N

ART UNIT

PAPER NUMBER

2195

DATE MAILED: 09/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	09/872,188		MULLEN, DAVID C.	
	Examiner		Art Unit	
	Jennifer N. To		2195	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 20-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-18 and 42-54 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 20-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-18, and 20-54 are pending for examination.
2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed (i.e. need to incorporate probability of available of resources at future point in time).
3. Claim 25 is objected to because of the following informalities: claim 25 is depend upon itself. Appropriate correction is required.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422

F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

5. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

6. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1, and 20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 20 of U.S. Patent No. 7095841. Although the conflicting claims are not identical, they are not patentably distinct from each other because both computer methods comprise substantially the same elements. For example, claims 1, and 20 's functions performed by the steps are the same and obvious as the steps of claim 20 of U.S. Patent No. 7095841. In addition, claim 20 of U.S. Patent No. 7095841 did not specifically teach the step of combining the probabilities. However, Hammond (U.S. Patent No. RE37073) teaches the step of combining the probabilities (col. 4, line 58 through col. 5, line 6; col. 5, lines 21-28; col.

12, lines 5-30). Therefore, it would have been obvious to one of an ordinary skill in the art at the time the invention was made to have combined the teaching of U.S. Patent No. 7095841 and Hammond, because Hammond teaching of combining the probabilities would improve the integrity of U.S. Patent No. 7095841 by establishing an automatic call back for a certain of the incoming calls (Hammond, col. 1, lines 12-13).

Claim Rejections - 35 USC § 101

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9. Claims 21-37 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

10. Claims 21, and 22 are rejected under 35 U.S.C. 101 because the claimed invention are directed to apparatus claim, but appearing to be comprised of software alone without claiming associated computer hardware required for execution, is not supported by either a specific and substantial asserted utility (i.e., transformation of data) or a well established utility (i.e., a practical application).

Claim Rejections - 35 USC § 112

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter in which the applicant regards as his invention.

12. Claims 1-5, 20-21, 23-25, and 38-41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. The following terms lacks antecedent basis:
 - i. the one resource – claims 1, 20, 21;
 - ii. the resource – claims 4, 24, 40;
 - iii. the probabilities – claims 1, 20, 21;
 - iv. the combining means – claim 21;
 - v. Tasks – claims 5, 41, 25.
- b. The claim language in the following claims is not clearly understood:
 - i. as per claim 1, lines 3-4, it is uncertain what is the base on “determining a probability of availability of the one resource at said future point in time” performed (i.e. based on what values to do the calculation, the resources vs. the number of tasks). Line 6, it is not clearly understood what is meant by “combining the probabilities” (i.e. combining the probability for each of the resource together, one against plurality of all resources). Line 6, it is not clearly understood what is meant by “obtaining a number” (i.e. what is a number, the result of all the resource probability combined).
 - ii. as per claim 2, line 2, it is not clearly understand what is meant by “using comprises” (i.e. using the number to schedule new tasks for the

resources for the future point in time comprises, OR the using step comprises).

iii. as per claim 3, line 2, it is not clearly understand what is meant by "combining comprises" (i.e. combining the probabilities to obtain a number comprises, OR the combining step comprises).

iv. as per claim 4, line 2, it is not clearly understand what is meant by "determining comprises" (i.e. determining a probability of availability of the one resource at said future point in time comprises, OR the determining step comprises).

v. as per claim 5, line 3, it is not clearly understand what is meant by "using comprises" (i.e. using the number to schedule new tasks for the resources for the future point in time comprises, OR the using step comprises).

vi. as per claims 20-21, 23-25, and 38-41, they have the same deficiencies as claims 1-5 above. Appropriate corrections are required.

vii. This listing of 112, 2nd paragraph problems is meant to be exemplary not exhaustive. Applicant should carefully review all of his/her current claims for additional 112, 2nd paragraph problems.

Claim Rejections - 35 USC § 102

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

14. Claims 1-3, 20-21, 23, 25, and 38-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Hammond (U.S. Patent No. RE37073).

15. As per claim 1, Hammond teaches the invention as claim including a work-management method comprising:

for a future point in time and each one of a plurality of resources, determining a probability of availability of the one resource at said future point in time (col. 1, lines 50-53; col. 2, lines 4-7; col. 3, lines 1-8; col. 4, lines 58-65; col. 8, lines 18-27);

combining the probabilities to obtain a number (col. 4, line 58 through col. 5, line 6; col. 5, lines 21-28; col. 12, lines 5-30); and

using the number to schedule new tasks for the resources for the future point in time (col. 5, lines 7-15, 53 through col. 6, line 31).

16. As per claim 2, Hammond teaches that wherein using comprises scheduling for the future point in time no more than the number of the new tasks to become available for servicing by the plurality of the resources (col. 5, line 53 through col. 6, line 31).

17. As per claim 3, Hammond teaches that wherein determining comprises summing the probabilities to obtain the number (col. 5, lines 21-28).

18. As per claims 20-21, 23, 25, and 38-39, they are rejected for the same reason as claims 1-3 above.

Allowable Subject Matter

19. Claims 6-18, and 42-54 are allowable.

20. Claims 22, and 26-37 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 101, set forth in this Office action.

21. Claims 4-5, 24, and 40-41 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, and 35 U.S.C. 101, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

22. Applicant's arguments with respect to claims 1-18, and 20-54 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer N. To whose telephone number is (571) 272-7212. The examiner can normally be reached on M-T 6AM- 3:30 PM, F 6AM- 2:30 PM.

24. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

25. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jennifer N. To
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